DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE
810 First Street, N.E. 2d Floor
Washington, DC 20002

STUDENT,[1]	)	
	)	
Petitioner,	)	
v.	)	
	)	**Bruce Ryan, Hearing Officer**
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
	)	**Issued: December 30, 2012**
Respondent.	)	
	)	

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STUDENT HEARING OFFICE
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HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed October 16, 2012, by a 20-year old adult student (the "Student" or "Petitioner") who resides in the District of Columbia and who has been determined to be eligible for special education and related services as a student with a disability under the IDEA.

Petitioner filed a previous complaint against DCPS in February 2012, which it resolved through an April 2012 settlement agreement ("SA"). Petitioner's multi-disciplinary team ("MDT") then met on May 24, 2012, to implement the SA and to revise his individualized education program ("IEP"). The MDT also agreed to conduct additional assessments.

Petitioner now alleges that DCPS denied him a free appropriate public education ("FAPE") following the April 2012 SA, in that: (a) DCPS failed timely to revise, and/or

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

implement a revised, behavior intervention plan ("BIP") for him pursuant to the April 2012 SA; (b) failed to develop an appropriate IEP for him on May 24, 2012; and (c) failed to provide him with an appropriate location of services and/or school placement for the 2012-13 school year.

On October 23, 2012, DCPS filed a timely Response, which denies the allegations. DCPS asserts (*inter alia*) that it has complied with the SA; that it informed Petitioner at the 5/24/12 MDT meeting that the DCPS school/program he was then attending (School A) was closing at the end of the 2011-12 school year; and that his neighborhood DCPS high school (School B) can implement his 5/24/12 IEP. [2]

On November 2, 2012, the parties held a resolution meeting, which did not resolve the Complaint. The parties also did not agree to end the resolution period early. Accordingly, the 30-day resolution period ended on November 15, 2012; and the 45-day timeline for issuance of the hearing Officer Determination ("HOD") will expire on December 30, 2012.

On November 19, 2012, a Prehearing Conference ("PHC") was held to discuss and clarify the issues and requested relief. At the PHC, the parties agreed to schedule the due process hearing for December 21, 2012. A Prehearing Order ("PHO") was issued on December 5, 2012. The parties then filed their five-day disclosures, as required, by December 14, 2012.

The Due Process Hearing was held in Hearing Room 2004 on December 21, 2012. Petitioner elected for the hearing to be closed. At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioner's Exhibits: P-1 through P-40.

Respondent's Exhibits: R-1 through R-5.

In addition, the following Witnesses testified on behalf of each party:

[2] DCPS also asserted that it provided Petitioner a completed comprehensive psychological re-evaluation on October 16, 2012 (the same date the Complaint was filed), and that it held an MDT meeting to review that evaluation on November 2, 2012 (the same date as the resolution meeting). As a result, Petitioner withdrew an additional claim/issue (Issue #4 of the Complaint) and corresponding requested relief alleging a failure to timely conduct and/or review the comprehensive psychological re-evaluation. *See Prehearing Order* (Dec. 5, 2012), p. 1.

Petitioner's Witnesses: (1) Student; (2) Mother; (3) Ms. Lisa DeBeauville, Special Education Advocate; and (4) Ms. Carrie Pecover, Seeds of Tomorrow.

Respondent's Witnesses: (1) LEA Representative & Transition Coordinator, School A; (2) LEA Representative & Special Education Coordinator ("SEC"), School B; and (3) School Psychologist.

Oral closing arguments were presented on the record at the conclusion of the hearing.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* 5-E DCMR §§ 3029, 3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures* ("*SOP*"). The statutory HOD deadline is December 30, 2012.

III. ISSUES AND REQUESTED RELIEF

As specified in the PHO, the issues presented for determination at hearing are:

(1) Behavioral Intervention Plan ("BIP") — Did DCPS fail to timely revise and/or implement a revised BIP pursuant to the April 2012 SA?

(2) Failure to Develop Appropriate IEP — Did DCPS fail to develop an appropriate IEP (*i.e.*, one that was reasonably calculated to confer educational benefit) on or about May 24, 2012, "in that it failed to place him in his least restrictive environment (LRE) which would be a full-time out of general education setting" (Complaint, p. 9)? [3]

(3) Failure to Provide Appropriate Placement/Location of Services — Did DCPS failing to provide Petitioner with an appropriate location of services and/or school placement for the 2012-13 school year?

Specifically, Petitioner alleges that School B is unable to implement the 05/24/2012 IEP; that he has safety concerns with School B resulting from his social/emotional issues; that School B cannot provide him with "the full time therapeutic setting that he requires"; and that "DCPS' refusal to consider alternate locations for the Student has resulted in the Student missing school during the 2012/2013 school year." Complaint, p. 11.

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[3] At the PHC, Petitioner's counsel confirmed that no other aspects of the 5/24/2012 IEP were being challenged in this case.

Petitioner requests that DCPS be ordered to: (a) revise his IEP to provide for full-time outside general education instruction; (b) fund a credit recovery program with individual tutoring support until such time as he earns the remaining credits for his diploma; and (c) award other appropriate compensatory education in the form of outside counseling and tutoring as proposed in the five-day disclosures. No specific school placement relief is requested.

IV. FINDINGS OF FACT

Based upon the evidence presented at the due process hearing, this Hearing Officer makes the following Findings of Fact:

1. Petitioner is a adult student who is a resident of the District of Columbia. *See Pet.Test.; P-1.*
2. Petitioner has been determined to be eligible for special education and related services as a child with a disability under the IDEA. His primary disability is Other Health Impairment ("OHI"), based on his previously diagnosed condition of Attention Deficit Hyperactivity Disorder ("ADHD") (type not specified). *See P-1; P-6; P-39; Parent Test.*
3. During the 2011-12 school year, the Student attended the School A program, which provided a non-traditional learning environment for DCPS special education students between the ages of 18 and 21 who were seeking to obtain their high school diplomas. The program included a shorter school day with on-line instruction in all courses. *See Trans. Coord. Test.; Parent Test.*
4. In February 2012, a meeting of Petitioner's MDT was held, at which DCPS proposed to place Petitioner at his neighborhood high school (School B) due to attendance problems at School A. Petitioner opposed that change and filed a due process complaint, which was then resolved by written settlement agreement executed by both parties in April 2012. The settlement agreement ("SA") is dated 4/25/2012, and it was signed by Petitioner on 4/27/2012 and by DCPS on 4/30/2012. *See P-18; P-27.*
5. In the April 2012 SA, the parties agreed that: (a) the Student would be allowed to return to School A for the remainder of the 2011-2012 school year; (b) DCPS would revise the Student's BIP to provide for hourly breaks; (c) DCPS would provide 56 hours of independent tutoring services; and (d) the Student must comply with School A's 80% minimum attendance policy. *P18-2.*

6. Following the April 2012 SA, the Student was allowed to return to School A for the remainder of the 2011-2012 school year.
7. On or about May 24, 2012, DCPS convened a meeting of the Student's MDT/IEP Team to determine his continued eligibility for special education services and to develop an annual IEP. Participants included Petitioner, his mother, his attorney, his compensatory education provider, Case Manager, special education teacher, general education teacher, DCPS school psychologist, and LEA representative. *P-2* (5/24/2012 meeting notes).
8. At the May 24, 2012 meeting, the MDT/IEP Team determined that the Student remained eligible for special education services as a student with an Other Health Impairment ("OHI"), but also determined that assessments were warranted "to tease out if the student may be exhibiting signs of an emotional disturbance classification." *P2-2.* The Team decided to obtain the additional assessments given Petitioner's display of emotional problems affecting his attendance and ability to access the curriculum at School A. *See P2-3.* However, School A reported that it was unable to develop an FBA/BIP pursuant to the settlement agreement until the Student "regularly attends school in order to participate in the assessment process." *P2-4. See also Trans. Coord. Test.* (social worker not able to observe Student during periods of non-attendance).
9. In discussing Least Restrictive Environment ("LRE") at the May 24, 2012 meeting, Petitioner's counsel submitted that the Student "requires a full-time therapeutic setting." *P2-5.* However, the MDT/IEP Team concluded that "there is not enough information and data at this time to change the hours of specialized instruction on the Student's IEP to a more restrictive setting." *Id.* The IEP Team agreed that the Student's "current hours will remain the same and will be re-visited after the Student is evaluated by a DCPS school psychologist to determine if his disability classification has changed." *Id. See also Trans. Coord. Test.*
10. At the May 24, 2012 meeting, DCPS also determined that the Student's "location of services" would change to his neighborhood school (School B) for the 2012-13 school year, as School A was closing and School B could implement his IEP. *P2-5.; see also Pecover Test.; Trans. Coord. Test.*
11. The Student's IEP developed May 24, 2012 provides 14.5 hours per week of specialized instruction in a General Education setting, five (5) hours per week of specialized

instruction in an Outside General Education setting, and 120 minutes per month of behavioral support services in an Outside General Education setting. *P1-6; R* 1-6. In the LRE justification section, the IEP states that Petitioner "continues to benefit from blended instructional support (technology, small group/one to one)." *P1-7; R1-7.*

12. During July 2012, DCPS attempted to conduct the assessments ordered by the IEP Team, but Petitioner was unable to participate due to the occurrence of a serious fire at his family's home and their resulting temporary relocation. *Pet. Test.; Parent Test.*
13. On or about August 30, 2012, DCPS completed work on a revised BIP, which allows the Student to take supervised five-minute breaks, as needed, after being on task for 30 minutes. *P-32.* The Student is also given a 30-minute break within the school day if he is disruptive and unable to attend to class work. *Id.* A copy of the revised BIP was provided to Petitioner's counsel on September 7, 2012. *Id.*
14. In late September 2012, the DCPS School Psychologist conducted a comprehensive psychological re-evaluation of the Student. *See R-6; Psych. Test.* A written report of the re-evaluation was prepared on October 3, 2012. *R6-1.*
15. On or about November 2, 2012, subsequent to the filing of the instant Complaint, DCPS convened a resolution meeting, followed by a meeting of the Student's MDT/IEP Team to review the comprehensive psychological re-evaluation and BIP. *See P3; R3; R4; SEC Test.* Petitioner requested an independent psychological assessment, which was authorized by DCPS. *R4-1.* The Student's need for a credit recovery program was then discussed, and the LEA representative agreed to do an audit of his credits. *R4-2.*
16. At the November 2, 2012 meeting, the Team also decided to amend the Student's IEP to increase his behavioral support services from 120 minutes per month to 60 minutes per week, and to add transportation services. *See R-3.* The IEP amendment effecting these changes is dated November 7, 2012. *P-4.*
17. Petitioner has not attended school since May 24, 2012. *See Parent Test.; Pet. Test.*
18. The opinion testimony of Petitioner's Special Education Advocate that he has a "very severe condition of school avoidance" or "phobia," which results in an "on-line environment" being his LRE, was not credible because (*inter alia*) she is not a licensed psychologist, she is not qualified by education or training to diagnose psychological conditions that may impact the Student's education, and the Student's substantially

contemporaneous evaluation by a licensed independent psychologist (*P39*) did not diagnose such condition.

19. Petitioner is approximately six (6) to eight (8) Carnegie Unit credits short of the total needed to receive a regular high school diploma from DCPS. *See P15 – P17; Parent Test.; SEC Test.*
20. It is undisputed that Petitioner is a bright student and has the cognitive ability and academic skills necessary to earn a regular high school diploma. He was recently tested independently using the CASAS skill level measurements and achieved a reading score of 242, which is well above the level required for GED classes, and which the evaluator considered a "phenomenal score" for someone who has been out school for many months. *Pecover Test.; P40. See also Psych. Test.* (discussing Woodcock-Johnson academic achievement scores from 2009 and 2012).
21. The Student's IEP was reasonably calculated to confer meaningful educational benefit on the Student as of May 24, 2012.
22. School B is capable of implementing the Student's IEP, as developed on May 24, 2012, and as amended on November 7, 2012.

V. DISCUSSION AND CONCLUSIONS OF LAW

As the party seeking relief, Petitioner was required to proceed first at the hearing and carried the burden of proof on the issues specified above. "Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a Free Appropriate Public Education (FAPE)." 5-E DCMR §3030.3; *see Schaffer* v. *Weast,* 546 U.S. 49 (2005). The hearing officer's determination is based on the preponderance of the evidence standard, which generally requires sufficient evidence to make it more likely than not that the proposition sought to be proved is true.

For the reasons discussed below, the Hearing Officer concludes that Petitioner has failed to meet his burden of proof on the issues presented for hearing.

A. Relevant IDEA Requirements

FAPE means "special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA...include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program (IEP)..." 20 U.S.C. § 1401(9); *see* 34 C.F.R. § 300.17; DCMR 5-E3001.1.

The "primary vehicle" for implementing the goals of the IDEA is the IEP, which the statute "mandates for each child." *Harris v. District of Columbia,* 561 F. Supp. 2d 63, 65 (D.D.C. 2008) (*citing Honig v. Doe,* 484 U.S. 305, 311-12 (1988)). *See* 20 U.S.C. 1414(d)(1)(A)(i); 34 C.F.R. 300.320; DCMR 5-E3009.1. "The IEP must, at a minimum, `provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.'" *Reid v. District of Columbia,* 401 F. 3d 516, 519 (D.C. Cir. 2005), *quoting Board of Education* v. *Rowley,* 458 U.S. 176, 200, 207 (1982). *See also Kerkam v. McKenzie,* 862 F. 2d 884 (D.C. Cir. 1988); *Anderson* v. *District of Columbia,* 109 LRP 18615 (D.D.C. 2009) ("IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children.").

Judicial and hearing officer review of IEPs is "meant to be largely prospective and to focus on a child's needs looking forward; courts thus ask whether, at the time an IEP was created, it was 'reasonably calculated to enable the child to receive educational benefits.'" *Schaffer* v. *Weast,* 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley,* 458 U.S. at 207); *see also Lessard v. Wilton Lyndeborough Coop. Sch. Dist.,* 518 F.3d 18, 29 (1st Cir. 2008) (IEP viewed "as a snapshot, not a retrospective").

"Designing an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP." *O.O. v. District of Columbia,* 573 F. Supp. 2d 41, 53 (D.D.C. 2008). Moreover, statutory law in the District of Columbia requires that "DCPS shall place a student with a disability in an appropriate special education school or program" in accordance with the IDEA. D.C. Code 38-2561.02 (b). *See also Branham v. District of Columbia,* 427 F. 3d 7, 12 (D.C. Cir. 2005), *citing McKenzie v. Smith,* 771 F.2d 1527, 1534-35 (affirming "placement

based on match between a student's needs and the services offered at a particular school"). Educational placement under the IDEA must be "based on the child's IEP." 34 C.F.R. 300.116 (b) (2). DCPS must also ensure that its placement decision is made in conformity with the Least Restrictive Environment ("LRE") provisions of the IDEA. *See* 34 C.F.R. §§ 300.114-300.116.

"The IDEA does not specifically address enforcement by hearing officers of settlement agreements reached by the parties." *Letter to Shaw,* 50 IDELR 78 (OSEP 2007). However, it is generally recognized that a complaint alleging a failure to implement an IDEA settlement agreement is within the jurisdiction and authority of a hearing officer if it amounts to a dispute over the provision of FAPE. [4]

B. Issues/Alleged Denials of FAPE

Petitioner claims that DCPS denied the Student a FAPE by: (1) failing timely to revise, and/or implement a revised, behavior intervention plan ("BIP") for him pursuant to the April 2012 settlement agreement ("SA"); (2) failing to develop an appropriate IEP (*i.e.,* one that was reasonably calculated to confer educational benefit) on May 24, 2012, "in that it failed to place him in his least restrictive environment (LRE) which would be a full-time out of general education setting"; and (3) failing to provide him with an appropriate school placement and/or location of services for the 2012-13 school year. Petitioner has failed to prove any of these claims.

Issue 1: Revised BIP

The settlement agreement executed by the parties on April 30, 2012 obligated DCPS to "revise the student's Behavior Intervention Plan to provide for hourly breaks." *P38-2.* DCPS so

[4] *See Letter to Shaw, supra; see also* 34 C.F.R. 300.507 (a); *Blackman-Jones* Consent Decree, Section II, A., pp. 10-11 (including within the "Jones class" any children who have been denied a FAPE because DCPS "failed to fully and timely implement agreements concerning a child's identification, evaluation, educational placement, or provisions of FAPE that DCPS has negotiated with child's parent or education advocate."). Settlement agreements are treated as contracts between the LEA and the parent or adult student, which are governed by District of Columbia law. *See, e.g., Hester v. District of Columbia,* 506 F.3d 1283 (D.C. Cir. 2007); *Makins v. District of Columbia,* 277 F.3d 544, 548 (D.C. Cir. 2002); *Cain v. Arts & Technology Academy Public Charter School,* 46 IDELR 163 (2006). In general, the "written language embodying the terms of an agreement will govern the rights and liabilities of the parties." *Howard Univ. v. Best,* 484 A.2d 958, 967 (D.C. 1984).

revised the BIP to provide breaks every half hour on or about August 30, 2012, thus satisfying this obligation. *See P-32.*

The April 2012 SA did not provide a deadline for revising the BIP, so DCPS was required to act within a reasonable time under the circumstances. Petitioner argues that it was unreasonable for DCPS to take four months to complete this task. However, as of the May 24, 2012 MDT meeting, the School A program noted that it was unable to conduct an FBA and develop an appropriate BIP pursuant to the SA "until the student regularly attends school in order to participate in the assessment process." *P2-4.* DCPS then attempted to complete the process over the summer, but Petitioner was not able to participate due to a house fire and resulting dislocation in July. DCPS ultimately was able to complete a revised BIP by the start of the 2012-13 school year, before its provisions would be put into practice. The Hearing Officer cannot conclude that such period of time was unreasonable under the circumstances.

Even assuming *arguendo* that DCPS should have acted more quickly, a "hearing officer's determination of whether a child received a FAPE must be based on substantive grounds." 34 C.F.R. § 300.513 (a) (1). In this case, any procedural inadequacy relating to the timing of the Student's BIP revision has not been shown to have (i) impeded the child's right to a FAPE, (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or (iii) caused a deprivation of educational benefit. *Id.,* § 300.513 (a) (2); *see Lesesne v. District of Columbia,* 447 F.3d 828 (D.C. Cir. 2006). The revised BIP addressing the issue specified in the SA was in place by the start of the 2012-13 school year, and no educational harm has been demonstrated.

Finally, to the extent Petitioner claims that DCPS failed to implement the revised BIP, such claim has no merit since Petitioner concedes he has not attended school at all during the 2012-13 school year. [5]

Accordingly, the Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that DCPS failed timely to revise and/or implement a revised BIP pursuant to the April 2012 SA.

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[5] To the extent Petitioner argues that the BIP should have been revised in some other way to address his persistent attendance problems, such revision was not specified in the April 2012 SA and was not presented as an issue for hearing in the Prehearing Order. *See* 34 C.F.R. 300.511 (d). Moreover, Petitioner never identifies what other provisions he claims should have been added to the BIP.

Issue 2: May 24, 2012 IEP

Petitioner's sole challenge to the adequacy of the May 24, 2012 IEP is his claim that it "failed to place him in his least restrictive environment (LRE) which would be a full-time out of general education setting." *Administrative Due Process Complaint*, p. 9; *Prehearing Order* (Dec. 5, 2012), p. 2, ¶ 6 (2). No goals, services, or other aspects of the IEP were challenged in this case, as confirmed at the PHC. *Id.*

The IDEA requires each public agency to ensure that "[t]o the maximum extent appropriate, children with disabilities ... are educated with children who are nondisabled," and that "removal of children with disabilities from the regular educational environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. §1412 (a) (5); 34 C.F.R. §300.114 (a) (2). *See also* DCMR §5-E3011.1; *e.g., Daniel R.R. v. El Paso,* 874 F.2d 1036 (5th Cir. 1989).

At hearing, Petitioner primarily relied upon the written evaluation report of Dr. Natasha Nelson, a licensed psychologist who was disclosed as a proposed witness but did not testify at hearing. Dr. Nelson evaluated the Student on December 4, 2012, and completed her written report on December 13, 2012, the day before the five-day disclosures were due in this case. While her report included a recommendation that the Student be placed into a full-time special education school geared toward working with children with ADHD and emotional disturbances (*P39,* p. 15), the report is entitled to little if any weight on this issue. The evaluation was conducted over ***six months after*** the May 24, 2012 IEP, and thus cannot be used to prove the inappropriateness of such IEP at the time it was created. *See Schaffer* v. *Weast,* 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley,* 458 U.S. at 207); *Lessard v. Wilton Lyndeborough Coop. Sch. Dist.,* 518 F.3d 18, 29 (1st Cir. 2008) (IEP viewed "as a snapshot, not a retrospective"). Moreover, by failing to present Dr. Nelson as a witness at hearing, Petitioner precluded any opportunity for DCPS to subject her analysis and conclusions to cross-examination.

Petitioner also presented the testimony of Lisa DeBeauville, a "Special Education Advocate" employed by the James E. Brown law firm, which represents Petitioner in this case.[6] Ms. DeBeauville testified, based on her review of Petitioner's prior educational records and a brief interview on 12/13/2012, that Petitioner has a "very severe condition of school avoidance" or "phobia," which results in an "on-line environment" being his LRE. *DeBeauville Test.* However, the Hearing Officer concludes that this opinion testimony is entitled to little, if any, weight on this issue. Ms. DeBeauville's testimony was not credible given (*inter alia*) that she is not a psychologist and is not qualified by education or training to diagnose psychological conditions that may impact the Student's education. Moreover, Petitioner's substantially contemporaneous evaluation by a licensed independent psychologist did not diagnose such condition. *See P39.* Finally, the Hearing Officer notes that Ms. DeBeauville's opinion testimony is obviously biased given her status as an employee of the law firm with a financial interest in the outcome of this case.

Accordingly, the Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that his LRE was required to be a full-time, out of general education setting as of May 24, 2012.

Issue 3: 2012-13 Placement/Location of Services

Petitioner has also failed to prove that School B is unable to implement the requirements of the May 24, 2012 IEP.[7] There was no testimony or other evidence that School B cannot provide all of the services and supports required under the IEP, including the 14.5 hours per week of specialized instruction in a general education setting, the five hours per week of specialized instruction in an outside general education setting, and the related behavioral support services. To the contrary, DCPS' witnesses testified that School B could do so, and that Petitioner can successfully negotiate a regular high school setting. *See SEC Test.; Psych. Test.*

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[6] The parties stipulated to Ms. DeBeauville's testifying as an expert in special education programming for students with emotional and/or behavioral difficulties. She holds an M.S. degree in Special Education, has an additional 60 credit hours toward a Ph. D. degree in Education, and is also in the process of completing a Master of Counseling degree. *See P37.*

[7] As noted above, Petitioner's complaint also alleged safety concerns with School B resulting from his social/emotional issues. Petitioner testified at hearing, however, that this was "just a neighborhood thing" and "not the school"; "it's just people in the area that I don't associate with [who] go there." *Pet. Test. See also Parent Test.* (cross examination); *Psych. Test.*

Petitioner can also take advantage of existing credit recovery programs offered there. *Id.* Moreover, even Petitioner's witness Ms. Pecover testified that the School B high school setting offered significant advantages over his previous placement since the School B teachers could "really mold the curriculum to what the student needs" and produce a program "more tailored" to those needs. *Pecover Test.*

By designating School B as the Student's location of services for the 2012-13 school year, DCPS met its IDEA obligation to offer placement in an appropriate school or program that can fulfill the requirements set forth in the IEP. *See McKenzie v. Smith*, 771 F.2d 1527, 1534-35 (D.C. Cir. 1985); *O.O. v. District of Columbia*, 573 F. Supp. 2d 41, 53 (D.D.C. 2008); D.C. Code 38-2561.02 (b). Accordingly, the Hearing Officer concludes that Petitioner failed to meet his burden of proof under Issue 3.

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At hearing, DCPS agreed that Petitioner has the ability and desire to earn his high school diploma, and that he is only about six to eight credits short of the total required for graduation. DCPS witnesses also indicated that there may be various educational alternatives, both at School B and elsewhere, through which Petitioner could earn the necessary credits. These may include the STAY programs with appropriate special education supports, as well as in-home instruction. *See, e.g., SEC Test.* While Petitioner has not shown that DCPS has denied him a FAPE to this point, **the Hearing Officer strongly urges DCPS to explore all possible alternatives at an MDT/IEP Team meeting as soon as possible,** as it would be extremely unfortunate if Petitioner could not succeed in reaching this very achievable goal before exiting special education.

According to DCPS counsel's representations at hearing and the testimony of DCPS' witnesses, DCPS is currently completing an audit of Petitioner's credits and plans to hold an MDT/IEP Team meeting to review Petitioner's recent independent psychological evaluation. The MDT will need to review the additional findings and recommendations in the IEE and decide whether they warrant any changes to the IEP, including but not limited to a more restrictive setting as Petitioner has requested. Regardless of the outcome of such review, it would be appropriate for the MDT to assess the Student's continued attendance problems and the availability of any other school/program placement alternatives that may yield more favorable

results for the Student at that time. The Hearing Officer hopes and expects that DCPS can complete all such actions within the next 30 days.

VI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, and the entire record herein, it is hereby **ORDERED**:

1. Petitioner's requests for relief in his Due Process Complaint filed October 16, 2012, are hereby **DENIED;** and

2. The Complaint is **DISMISSED, With Prejudice.**

Dated: December 30, 2012

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia court of competent jurisdiction or in a District Court of the United States, without regard to the amount in controversy, within ninety (90) days from the date of the Decision of the Hearing Officer in accordance with 20 U.S.C. §1415(i)(2).